

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

SKAGIT GARDENS, INC. *et al.*<sup>1</sup>  
3100 Old Highway 99 South  
Mount Vernon, WA 98273  
80-0161154,

Debtors.

No. Lead Case No. 16-12879

DECLARATION OF MARK BUCHHOLZ  
IN SUPPORT OF DEBTORS' MOTION  
FOR: ORDER (i) SCHEDULING  
HEARING TO APPROVE ASSET  
PURCHASE AGREEMENT; (ii)  
APPROVING FORM AND MANNER OF  
NOTICE; (iii) APPROVING BREAK UP  
FEE; (iv) APPROVING BIDDING  
PROCEDURES AND (v) APPROVING  
PROCEDURES FOR ASSUMPTION AND  
ASSIGNMENT OF EXECUTORY  
CONTRACTS

- AND -

MOTION FOR ORDER APPROVING  
THE SALE OF SUBSTANTIALLY ALL  
OF THE DEBTORS' ASSETS FREE AND  
CLEAR; APPROVING THE  
ASSUMPTION AND ASSIGNMENT OF  
CONTRACTS

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<sup>1</sup> The Debtors are Skagit Gardens, Inc., Skagit RESPE LLC, Skagit TPPSPE LLC, and Skagit Real Estate Holdings LLC.

MARK BUCHHOLZ declares as follows:

1. I am the President of Debtor Skagit Gardens, Inc. ("Skagit Gardens" or the "Company"). I have personal knowledge of the facts set forth herein.

2. In late 2015, Early Morning, LLC contacted me with respect to interest in acquiring Skagit Gardens' business as a going concern. Since that initial contact, I have been the person at the Company primarily responsible for discussions, negotiations, oversight of due diligence information provided, and any related matters associated with Early Morning's interest in acquiring our business. In addition, we have assembled a team that has participated in these efforts, including several senior management individuals at the Company, including Tom Sidley, our financial advisors, Clyde Hamstreet and Hannah Schmidt, and our lawyers, Jay Kornfeld, Christine Tobin-Presser, and Matt Fick.

3. Early Morning is a subsidiary of a larger company called Gardens Alive, a privately-owned and well-respected catalog company that sells plants and other garden supplies. In addition, Gardens Alive owns and operates two well established large wholesale nurseries, Iseli Nursery, and Weeks Roses. In late 2015, our shareholder, Aequis Capital Group ("Aequis") refused to consent to a potential sale to Early Morning because it would not generate sufficient value to fund a distribution to Aequis on its secured debt or its equity. Consequently, discussions with Early Morning ended.

4. In the fall of 2015, the Company's lender, NewStar, conditioned its continued financing of Skagit Gardens on the support funding by Aequis of a \$1.2 million seasonal line of credit ("Aequis Seasonal Line"). The plan was for the Aequis Seasonal Line to be available

1 beginning in January 2016 for Skagit Gardens' use in ramping up for the January through August  
2 growing season, which is the most critical season of our year.

3 5. Ultimately, Aequitas advanced only \$340,000 of the committed \$1.2 million Aequitas  
4 Seasonal Line. Aequitas' underfunding created severe cash pressures and shortfalls for Skagit  
5 Gardens as it headed into its critical growing season, where large expenditures for raw materials were  
6 required. In late January 2016, Aequitas informed Skagit Gardens that it was incurring its own severe  
7 financial challenges, had made significant layoffs, and would be unable to make any further advances  
8 on the Aequitas Seasonal Line.

9 6. In February 2016, faced with insufficient working capital in the short and long term,  
10 Skagit Gardens renewed discussions with Early Morning, with Aequitas' blessing, and began  
11 negotiating the terms of a sale contemplated to close outside of a bankruptcy. Aequitas accepted that  
12 it was not likely to receive any distribution from the sale, and supported the sale effort due to its own  
13 financial situation, which seemed to be worsening quickly.

14 7. We began serious negotiations with Early Morning, and by early March 2016, we  
15 appeared to be close the terms of a final, agreed Asset Purchase Agreement that could be  
16 consummated without the need for a bankruptcy. Unfortunately, Aequitas' financial woes came to a  
17 head in early March 2016. On March 10, 2016, the Securities and Exchange Commission ("SEC")  
18 filed a lawsuit against Aequitas Management, LLC and numerous affiliates in the United States  
19 District Court for the District of Oregon, Case No. 3:16-cv-00438-PK. A Stipulated Order Appointing  
20 Receiver was quickly entered, and Ron Greenspan of FTI Consulting, Inc. was appointed receiver (the  
21 "Aequitas Receiver") over the various Aequitas entities ("Aequitas Receivership").

22 8. Due to complexities created by Skagit Gardens' shareholder and subordinated lender  
23 being party to an SEC receivership, Early Morning communicated that it was willing to move

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1 forward, but only in the context of a § 363 sale process in a Chapter 11 bankruptcy. This meant a  
2 significant shift in the structure and approach of the transaction, which required a new round of  
3 negotiations and drafting to address the procedures and additional oversight and process of a Chapter  
4 11. Both Skagit Gardens and Early Morning incurred significant cost in these efforts that would have  
5 been unnecessary has the Aequitas Receivership not been commenced. Early Morning communicated  
6 early in this phase of the process that it would require a break-up fee and overbid protections in order  
7 to sign an agreement as a stalking horse.

8 9. Extensive negotiations ensued between the parties over the terms of a purchase and  
9 sale agreement. At one point in mid-late March, the parties reached an impasse regarding the  
10 economic terms of a transaction, and negotiations halted for a week or more. Ultimately, after  
11 meaningful back and forth discussions, Early Morning agreed to an increase in the price and the  
12 parties resumed work on the terms of a sale. Throughout the negotiations, numerous issues required  
13 compromise, and both parties did so, working to find common ground. The ultimate agreement is a  
14 product of extensive, time consuming, and intense negotiations completed over several months. As  
15 noted above, Early Morning compromised on the price it would pay, and the parties also heavily  
16 negotiated other terms that resulted in compromises by both, including: the amount and terms of the  
17 Break-up Fee and Overbid Protections, the terms of the bidding procedures, the formula and process  
18 for determining the Working Capital Adjustment, how continued employment would be addressed,  
19 and who would pay the transfer taxes, to name a few.

20 10. Throughout the negotiations, Skagit Gardens kept its working capital lender, Sterling  
21 Bank f/k/a NewStar, apprised of the negotiations and the progress. In addition, after the exclusivity  
22 period with Early Morning expired in mid-March, Skagit Gardens and its professionals actively  
23 reached out to a number of other potential buyers. In total, we contacted 15 parties to gauge interest,

1 12 of which signed Non-Disclosure Agreements (“NDA”) and received due diligence information. Of  
2 those, the Debtors’ management and professionals had substantive meetings and conversations with at  
3 least 9, and 7 have expressed serious interest in purchasing Skagit Gardens. We have engaged in a  
4 very active process with these interested buyers. We communicated to each that the sale process  
5 would be completed through a Chapter 11, with an initial stalking horse, against which competitive  
6 overbids could be submitted with an auction to determine the highest and best offer. As a side note,  
7 we did explore with each interested party their interest in being a stalking horse bidder. None were  
8 quite prepared to do so, though several have communicated an interest in submitting bids during the  
9 Chapter 11 sale process. As part of these discussions with interested buyers, we informed them that  
10 the process will move very quickly, with competitive bids expected to be due in the latter part of June,  
11 and anticipated closing of a sale in early July. We have informed these parties of the filing of this  
12 Chapter 11 case and will provide them with a copy of the Purchase Agreement with Early Morning as  
13 soon as it is filed with the Court and is a public document.

14 11. At one point, we discussed with Sterling whether an investment banker should be hired  
15 to aid in the marketing and sales efforts. While Sterling deferred to the Company on the ultimate  
16 decision, it did not believe an investment banker would add value to the process, especially in light of  
17 the fact that the universe of likely buyers had been identified and contacted and time was short. We  
18 agreed. As a result, there is no commission associated with the proposed sale to Early Morning.

19 12. Attached as Exhibit A is the final, signed version of the Asset Purchase Agreement  
20 between Skagit Gardens and Early Morning. This Agreement represents the complete agreement  
21 between the parties; there are no side agreements or understandings, written or oral, between the  
22 parties.  
23

13. Attached as Exhibit B is the signed Consignment Agreement entered into between Skagit Gardens and Early Morning. Skagit Gardens wanted to purchase certain hellebore inventory but lacked the working capital to do so for the reasons discussed earlier in this Declaration. Early Morning agreed to cover the purchase price of \$84,500 and provided the inventory under the terms of the attached Consignment Agreement. Skagit Gardens does not include this hellebore inventory in the owned inventory on its books. Under the Asset Purchase Agreement with Early Morning, this will simply be subsumed into the post-closing operations without financial effect if Early Morning is the ultimate buyer. If a different party is the ultimate buyer, the Asset Purchase Agreement provides that that third party buyer will pay, as part of its overbid, the \$84,500 necessary to purchase this inventory so that it will belong to the company post-closing.

14. The Debtors filed these cases to complete the sales process and to consummate the highest and best transaction for the benefit of existing secured lenders, unsecured creditors, employees, and vendors/suppliers.

15. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED in Mount Vernon, Washington, this 31st day of May, 2016.

/s/ Mark Buchholz  
Mark Buchholz

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